

Decision 02-07-020 July 17, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Pacific Bell (U 1001 C),

Complainant,

vs.

FirstWorld Communications, Inc.  
FirstWorld SoCal (U 5733 C)  
FirstWorld Orange Coast (U 5782 C)  
FirstWorld SGV (U 5783 C)

Defendant.

Case 99-04-046  
(Filed April 28, 1999)

David Discher, Attorney at Law, and

Colleen O'Grady, Attorney at Law, for  
Pacific Bell, complainant.

Blumenfeld & Cohen, by Stephen P. Bowen,  
Attorney at Law, for First World Southern  
California, defendant.

Nossaman Guthner Knox & Elliott, LLP, by  
Martin A. Mattes, Attorney at Law, for  
the special purpose of contesting personal  
jurisdiction for The Mills Corporation and  
Orange City Mills Limited Partnership.

## **OPINION DISMISSING COMPLAINT**

### **Summary**

In its complaint, Pacific Bell (Pacific) alleged that FirstWorld SoCal (U 5733) (FWSC), by virtue of its Letter of Agreement (LOA) with Orange City Mills Limited Partnership (Mills), is the exclusive provider of service at The Block at Orange (Block), a shopping mall. Mills owns Block. Pacific also alleged that FWSC was the beneficiary of better terms of access to Block than Pacific was offered, in violation of Decision (D.) 98-10-058 and D.92-01-023. Pacific asked that FWSC be ordered to renegotiate the LOA so that FWSC will not have the ability to exclude Pacific from serving customers at Block. By D.02-05-045, we revoked FWSC's Certificate of Public Convenience and Necessity (CPCN). The LOA no longer exists, and FWSC no longer provides service to Block. Therefore, since the causes of action no longer exist, this proceeding is dismissed.

### **I. Background**

Hearings were held on November 8, 9, 10, and 12, 1999, briefs were filed, and the proceeding was submitted on December 23, 1999.<sup>1</sup> The Presiding Officer's Decision (POD) was mailed on February 18, 2000. Commissioner Richard A. Bilas filed a request for review on March 17, 2000, and FWSC filed an appeal on March 20, 2000.

On May 9, 2001, FWSC filed Application 01-05-023 to discontinue service to customers in selected rate centers, including Block. On May 24, 2001, FWSC filed a motion to dismiss this complaint. On May 25, 2001, FWSC's customers at Block were transitioned to Pacific. On June 8, 2001, Pacific filed its opposition to the

---

<sup>1</sup> Many of the exhibits and portions of the transcripts are under seal.

motion to dismiss. Subsequently, FWSC modified its application to include all of its customers, and to relinquish its CPCN. By D.02-05-045, FWSC's application was granted and its CPCN revoked.

In its motion to dismiss, FWSC stated that it would no longer be serving tenants at Block. FWSC and Mills would be terminating the LOA resulting in Mills acquiring FWSC's inside wire and intrabuilding network cable. Therefore, FWSC says that the material facts on which the complaint was based have changed so as to render the causes of action moot.

In opposing the motion, Pacific said that it suffered compensable damages as a result of FWSC's actions. A finding that FWSC violated Commission decisions would enable it to recover damages in state court. Pacific also says that FWSC's actions should be addressed to prevent future harm to customers, competitors, and competition by FWSC or other carriers.

## **II. Discussion**

D.98-10-058, often referred to as the right-of-way (ROW) decision, provides the process under which this complaint was filed. The process is described in findings of fact 72 through 74 as follows:

"72. Any carrier may file a formal complaint against any other carrier with an access agreement with a private building owner, including any executed prior to the date of this decision, that allegedly has the effect of restricting access of other carriers or discriminating against the facilities of other carriers, such as CLCs.

"73. In the case of such complaints, the complainant will have the burden of proving that the defendant carrier is the exclusive provider of service or the beneficiary of better terms of access in violation of the policies of this order.

“74. If, after a hearing, we find that a carrier’s agreement or arrangement with a private building owner is unfairly discriminatory with respect to other carriers, we shall direct that within 60 days, the agreement be renegotiated. Failing that, at the end of 60 days, a fine shall be imposed ranging from \$500 to \$200,000 per day based on the number of lines served in the building until the agreement is renegotiated to remove the discrimination.”

\* \* \*

The only result that Pacific could receive from this proceeding would be an order requiring that the LOA be renegotiated. Since the LOA no longer exists, the remedy sought in the complaint is no longer available or necessary. Pacific’s causes of action are moot. As to Pacific’s quest for damages, the record developed in this proceeding is available to Pacific in pursuing any court action it wants to take. It would not be appropriate, or the best use of the Commission’s resources, to further address this complaint purely for the purpose of helping Pacific develop its court case.

Since FWSC no longer has a CPCN to operate as a local exchange carrier in California, it is precluded from providing local exchange service. As far as other carriers are concerned, Pacific has presented no evidence that a significant number of other carriers are acting as Pacific alleged FWSC acted. Therefore, we see no need to address the alleged actions to prevent future harm to customers, competitors, and competition by FWSC or other carriers. If Pacific believes that other carriers are acting in a similar fashion, it can file a complaint as it did here.

The request for review and FWSC’s appeal filed in this proceeding address the findings in the POD regarding FWSC’s alleged actions. Since the remedy sought in the complaint is no longer available or necessary, the request for review and appeal need not be addressed.

For the above reasons, we will dismiss this complaint.

### **Findings of Fact**

1. On May 25, 2001, FWSC's customers at Block were transitioned to Pacific.
2. By D.02-05-045, FWSC's CPCN was revoked.
3. The only result that Pacific could receive from this proceeding would be an order requiring that the LOA be renegotiated.
4. The LOA no longer exists.
5. The remedy sought in the complaint is no longer available or necessary.
6. The record developed in this proceeding is available to Pacific in pursuing any court action it wants to take.
7. There is no need to address FWSC's alleged actions to prevent future harm to customers, competitors, and competition by FWSC or other carriers.
8. The request for review and FWSC's appeal filed in this proceeding address the findings in the POD regarding FWSC's alleged actions.

### **Conclusions of Law**

1. Pacific's causes of action are moot.
2. The complaint should be dismissed, effective immediately.

## **O R D E R**

**IT IS ORDERED** that this proceeding is dismissed.

This order is effective today.

Dated July 17, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners